Majlis Peguam Malaysia v Rajehgopal a/l Velu & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-55–08 OF 2015(B)
RICHARD MALANJUM CJ (SABAH AND SARAWAK), AHMAD MAAROP, ABU SAMAH NORDIN, RAMLY ALI AND ZAHARAH IBRAHIM FCJJ
29 JUNE 2016

Legal Profession — Disciplinary proceedings — Appeal against decision of disciplinary board — Whether Court of Appeal erred in requiring charge to be specifically framed or preferred against advocate and solicitor in disciplinary proceedings — Whether there was any prejudice or denial of natural justice to advocate or solicitor — Whether DB and DC required to frame specific charge against advocate and solicitor — Whether findings of DC and DB in disciplinary proceedings fell within scope of complaint — Whether DB had power to enhance punishment recommended by DC without giving reasons — Whether period of suspension imposed unreasonable and inappropriate

On 21 July 2013, Ganashalingam a/l Rajah ('the second respondent') wrote a letter of complaint alleging misconduct committed by Rajehgopal a/l Velu ('the first respondent'), an advocate and solicitor, in attesting the signatures of two vendors of a piece of property without seeing them sign in his presence. In his letter of complaint, the second respondent claimed that the property was co-owned by one Mdm Maheswari and Mdm Poonamah and that they could not have signed the instrument of transfer because Mdm Maheswari had died before the transfer and Mdm Poonamah claimed that she had not signed the said transfer. As such the second respondent concluded that the first respondent had committed a 'penipuan' in saying that the signatures of the vendors were attested before him. The disciplinary committee ('the DC') set up to hear the complaint found the appellant guilty of misconduct under s 94(3)(o) of the Legal Profession Act 1976 ('the Act') and recommended his suspension for a period of six months. The disciplinary board ('the DB') agreed with the DC. However the DB imposed a greater punishment and suspended the appellant for a period of 12 months. The appellant appealed to the High Court against the decision of the DB but the High Court found that the complaint was proven and that the appellant had committed a disciplinary offence. Thus, the High Court dismissed the appeal. The first respondent appealed against the decision of the High Court on the grounds that there was no specific charge framed against him and that the DB had not given any reasons for rejecting the recommendation of the DC and imposing a greater sentence. The Court of Appeal held that a charge should be precisely formulated and framed to include specific accusation against the first

respondent to enable the first respondent to have notice of the very nature of the allegations against him at the first opportunity. The Court of Appeal also held that the DC had acted outside the scope of powers granted to it, which was to inquire into the complaint of fraud, when it held that the first respondent had acted unprofessionally and was guilty of misconduct under s 94(3)(o) of the Act in attesting the signatures in question, which was not the subject matter of the complaint. The Court of Appeal thus allowed the first respondent's appeal. Dissatisfied with the decision of the Court of Appeal, the Bar Council, Malaysia ('the appellant'), which was the intervener in the proceedings in the courts below, appealed to this court. The appellant submitted that an omission to frame a formal charge against the first respondent in the present case would not amount to a breach of the Act as there could not be a breach where no such requirement existed. The first respondent responded that merely because the word 'inquiry' was used in the Act, it did not follow that no charge needed to be framed for the solicitor to answer.

Held, allowing the appeal with no order as to costs:

(1) There was no provision in the Act or the 1994 Rules requiring a charge to be specifically framed or preferred against an advocate and solicitor in disciplinary proceedings. At the same time, it was a basic rule of natural justice that an advocate and solicitor should be given an opportunity of being heard in disciplinary proceedings under the Act. However, the rules of natural justice should not be governed by the adversarial system of justice of criminal courts but should be inquisitorial or investigatory in nature. Thus, in the present case the first respondent was entitled to know the details of the allegations made against him in the letter of complaint at the very earliest stage to prepare his explanation and later to be heard at all stages of the proceedings thereafter (see paras 29, 32 & 35).

(2) In considering whether there was any prejudice or denial of natural justice to the first respondent, it was necessary to look at the substance rather than the form, to determine whether the first respondent had been informed of all the material ingredients and facts relating to the complaint lodged against him. It did not necessarily mean it should only be by way of a formal charge framed against the first respondent. The complaint against the first respondent in the present case fulfilled all the requirements under r 3 of the 1994 Rules. It was sufficient to give an opportunity to the first respondent to exercise his right to be heard and to explain and exculpate himself, even though it was not presented in the form of a formal charge. Based on the details of the first respondent's participation in the proceedings and his letter of explanation, it was clear that he had sufficient notice of all the material facts of the complaint against him. In the circumstances, the absence of a charge specifically framed against him did not occasion any procedural unfairness or breach

of the rules of natural justice. He was not deprived of the opportunity to contradict the complaint against him (see paras 37 & 40–41).

(3) The Court of Appeal in finding that a formal charge needed to be specifically framed against the first respondent was relying on the case of disciplinary proceedings against a police officer wherein the regulations set out a mandatory requirement that a charge should be framed in accordance with the offence. In the present case, we are dealing with disciplinary proceedings against an advocate and solicitor under the Act. There was no express provision either in the Act or the 1994 Rules mandating such requirement (see paras 43–44).

(4) The findings and recommendations made by the DC and the making of the order by the DB that the first respondent was guilty of conduct which was unbefitting of an advocate and solicitor under s 94(3)(o) of the Act in attesting the transfer document without the presence of the vendors was within the scope of the complaint. The Court of Appeal erred in finding that the first respondent's conduct which the DC found to fall under s 94(3)(o) of the Act was not the subject matter of the complaint and that the DC had acted outside the terms of power granted to it, which was to inquire into the complaint of fraud. Therefore, that finding could not stand (see para 56).

(5) Under the current provisions of s 103D(1) of the Act, the DB should record the reasons if it rejected the recommendation made by the DC. This was a mandatory requirement, which came into effect on 3 June 2014. The disciplinary proceedings on the matter before the DB was conducted prior to the effective date of the amendment to s 103D(1) of the Act. Therefore, the DB could not be said to have exceeded its power for failing to give reasons for its rejection of the DC's recommendation. However, based on the facts and circumstances of the case, the period of suspension of six months imposed on the first respondent, as recommended by the DC, was more reasonable and appropriate. The fact that the first respondent had admitted to his negligent conduct and the fact that there was no finding of fraud on his part, should be considered as good mitigating factors (see paras 49 & 59–61).

[Bahasa Malaysia summary

Pada 21 Julai 2013, Ganashalingam a/l Rajah ('responden kedua') telah menulis surat aduan mendakwa salah laku yang dilakukan oleh Rajehgopal a/l Velu ('responden pertama'), seorang peguambela dan peguamcara, dalam mengesahkan tandatangan dua penjual sebidang hartanah tanpa melihat mereka menurunkan tandatangan dengan kehadirannya. Dalam surat aduan itu, responden kedua mendakwa bahawa hartanah itu dimiliki bersama oleh Puan Maheswari dan Puan Poonamah dan bahawa mereka tidak mungkin menandatangani alat pindah milik itu kerana Puan Maheswari telah meninggal

dunia sebelum pindah milik itu dan Puan Pooniah mendakwa bahawa dia tidak menandatangani pemindahmilikan tersebut. Oleh itu responden kedua membuat kesimpulan bahawa responden pertama telah melakukan satu penipuan dengan mengatakan bahawa tandatangan penjual-penjual itu disaksikan di hadapannya. Jawatankuasa tatatertib ('JT') yang ditubuhkan untuk mendengar aduan itu mendapati perayu bersalah kerana salah laku di bawah s 94(3)(o) Akta Profesyen Undang-Undang 1976 ('Akta tersebut') dan mencadangkan penggantungannya untuk tempoh enam bulan. Lembaga tatatertib ('LT') bersetuju dengan JT. Walau bagaimanapun LT telah mengenakan hukuman yang lebih berat dan menggantung perayu selama 12 bulan. Perayu telah merayu ke Mahkamah Tinggi terhadap keputusan LT tetapi Mahkamah Tinggi mendapati bahawa aduan itu telah dibuktikan dan bahawa perayu telah melakukan kesalahan tatatertib. Oleh itu, Mahkamah Tinggi telah menolak rayuan tersebut. Responden pertama telah merayu terhadap keputusan Mahkamah Tinggi atas alasan bahawa tidak terdapat pertuduhan spesifik yang dibuat terhadapnya dan bahawa LT tidak memberikan apa-apa sebab untuk menolak cadangan JT dan mengenakan hukuman lebih berat. Mahkamah Rayuan memutuskan bahawa suatu pertuduhan hendaklah dibuat sewajarnya dan dibuat dengan memasukkan pertuduhan spesifik terhadap responden pertama bagi membolehkan responden pertama diberitahu tentang sifat dakwaan terhadapnya seawal peluang yang mungkin. Mahkamah Rayuan juga memutuskan bahawa JT itu telah bertindak di luar skop kuasa yang diberikan kepadanya, iaitu untuk menyiasat tentang aduan fraud, apabila ia memutuskan bahawa responden pertama telah bertindak secara tidak profesional dan bersalah kerana salah laku di bawah s 94(3)(o) Akta tersebut dalam mengesahkan tandatangan yang dipersoalkan, yang bukan hal perkara aduan itu. Mahkamah Rayuan dengan itu membenarkan rayuan responden pertama. Berasa tidak puas hati dengan keputusan Mahkamah Rayuan, Badan Peguam Negara, Malaysia ('perayu'), yang merupakan pencelah dalam prosiding di mahkamah bawahan, telah merayu kepada mahkamah ini. Perayu berhujah bahawa satu peninggalan untuk membuat pertuduhan rasmi terhadap respodnen pertama dalam kes ini tidak merupakan pelanggaran Akta tersebut kerana tidak mungkin ada pelanggaran di mana keperluan sebegitu tidak wujud. Responden pertama menjawab bahawa hanya kerana perkataan 'inquiry' digunakan dalam Akta tersebut, ia tidak diikuti bahawa tiada pertuduhan diperlukan untuk dibuat agar dijawab peguamcara.

Diputuskan, membenarkan rayuan tanpa perintah untuk kos:

(1) Tiada peruntukan dalam Akta tersebut atau Kaedah 1994 yang menghendaki satu pertuduhan dibuat secara spesifik terhadap peguambela dan peguamcara dalam prosiding tatatertib. Pada masa yang sama, ia adalah rukun asas keadilan asasi bahawa seorang peguambela dan peguamcara patut diberikan peluang untuk didengar dalam

prosiding tatatertib di bawah Akta tersebut. Walau bagaimanapun, rukun keadilan asasi tidak patut dikawal oleh sistem keadilan adversial mahkamah jenayah tetapi patut bersifat inkuisitori atau siasatan. Oleh itu, dalam kes ini responden pertama berhak untuk mengetahui butiran dakwaan yang dibuat terhadapnya dalam surat aduan itu di peringkat awal lagi untuk menyediakan penjelasannya dan kemudian untuk didengar di semua peringkat prosiding selepas itu (lihat perenggan 29, 32 & 35).

(2) Dalam mempertimbangkan sama ada terdapat apa-apa prejudis atau penafian keadilan asasi terhadap responden pertama, adalah perlu untuk melihat kepada substans dan bukan bentuk, untuk menentukan sama ada responden pertama telah diberitahu tentang semua elemen penting dan fakta berkaitan aduan yang dibuat terhadanya. Ia tidak semestinya bermaksud ia hanya perlu melalui pertuduhan rasmi yang dibuat terhadap responden pertama. Aduan terhadap reponden pertama dalam kes ini memenuhi semua keperluan di bawah k 3 Kaedah 1994. Adalah mencukupi untuk memberikan peluang kepada responden pertama menggunakan haknya untuk didengar dan untuk menjelaskan dan membebaskan dirinya, meskipun ia tidak dikemukakan dalam bentuk pertuduhan rasmi. Berdasarkan butiran tentang penglibatan responden pertama dalam prosiding dan surat penjelasannya, adalah jelas bahawa dia mempunyai notis mencukupi tentang semua fakta penting berhubung aduan yang dibuat terhadapnya. Dalam keadaan ini, ketiadaan pertuduhan yang dibuat secara spesifik terhadapnya tidak menyebabkan apa-apa ketidakadilan prosedur atau pelanggaran rukun keadilan asasi. Dia tidak dinafikan peluang untuk membantah aduan terhadapnya (lihat perenggan 37 & 40–41).

(3) Mahkamah Rayuan apabila mendapati bahawa pertuduhan rasmi perlu dibuat secara spesifik terhadap responden pertama telah bergantung kepada kes prosiding tatatertib terhadap pegawai polis di mana peraturan-peraturan menyatakan keperluan mandatori bahawa satu pertuduhan hendaklah dibuat menurut kesalahan. Dalam kes ini, ia adalah prosiding tatatertib terhadap peguambela dan peguamcara di bawah Akta tersebut, tiada peruntukan nyata sama ada dalam Akta tersebut atau Kaedah 1994 yang mewajibkan keperluan sedemikian (lihat perenggan 43–44).

(4) Penemuan dan cadangan yag dibuat oleh JT dan pembuatan perintah oleh LT bahawa responden pertama telah melakukan salah laku yang tidak sepatutnya oleh peguambela dan peguamcara di bawah s 94(3)(o) Aka tersebut dalam mengesahkan dokumen pindah milik tanpa kehadiran penjual-penjual adalah dalam skop aduan itu. Mahkamah Rayuan terkhilaf kerana mendapati bahawa perlakuan responden pertama yang didapati oleh JT terjatuh di bawah s 94(3)(o) Akta tersebut

bukanlah hal perkara berhubung aduan itu dan bahawa JT telah bertindak di luar bidang kuasa yang diberikan kepadanya, yang memerlukan siasatan ke atas aduan tentang fraud. Oleh itu, penemuan tersebut tidak boleh kekal (lihat perenggan 56).

(5) Di bawah peruntukan kini s 103D(1) Akta tersebut, LT hendaklah merekodkan sebab-sebab jika ia menolak cadangan yang dibuat oleh JT. Ini adalah keperluan mandatori, yang mula berkuat kuasa pada 3 Jun 2014. Prosiding tatatertib berhubung perkara ini sebelum LT telah dilakukan sebelum tarikh kuat kuasa kepada pindaan s 103D(1) Akta tersebut. Oleh itu, LT tidak boleh dikatakan melampaui kuasanya kerana gagal memberikan sebab kerana penolakan cadangan JT. Walau bagaimanapun, berdasarkan fakta dan keadaan kes, tempoh penggantungan enam bulan yang dikenakan ke atas responden pertama, sepertimana dicadangkan oleh JT, adalah lebih munasabah dan sesuai. Fakta bahawa responden pertama telah mengakui perbuatan cuainya dan fakta bahawa tiada penemuan berhubung fraud di pihaknya, hendaklah dianggap sebagai faktor-faktor mitigasi yang kukuh (lihat perenggan 49 & 59–61).]

Notes

For cases on appeal against decision of disciplinary board, see 9 *Mallal's Digest* (5th Ed, 2015) paras 1512–1513.

Cases referred to

Abdullah bin Borhan v Ketua Polis Melaka & Anor [2008] 8 MLJ 161; [2008] 9 CLJ 605, HC (refd)

Albert Chew v Hong Leong Finance Bhd [2001] 4 MLJ 497; [2001] 4 CLJ 419, HC (refd)

Aziana bt Uda Bahari v Gan Kong You [2009] 3 MLJ 495; [2009] 8 CLJ 438, HC (refd)

B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169, PC (folld)

Cooper v The Board of Works for the Wandsworth District (1863) 143 ER 414; (1861-73) All ER Rep 1554 (refd)

Haji Ali bin Haji Othman v Telekom Malaysia Bhd [2003] 3 MLJ 29, CA (refd)

Jerald Allen Gomez v Shencourt Sdn Bhd (Majlis Peguam, intervenor) [2006] 2 MLJ 343, HC (refd)

Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor [2012] 2 MLJ 8; [2011] 3 CLJ 213, HC (folld)

Leeson v General Council of Medical Education and Registration [1889] 43 Ch D 366, CA (folld)

Lembaga Jurutera Malaysia v Leong Pui Kun [2009] 2 MLJ 36, FC (refd)

Lim Ko & Anor v Board of Architects [1966] 2 MLJ 80, FC (refd)

Lim Teng Ee Joyce v Singapore Medical Council [2005] 3 SLR 709; [2005] SGHC 129, HC (refd)
Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 308, CA (refd)
Saufee A Rahman v Che Yusof Che Ngah & Ors [2014] 7 CLJ 691, CA (refd)
Tan Hee Lock v Commissioner for Federal Capital & Ors [1973] 1 MLJ 238, FC (refd)
Tan Tiang Hin Jerry v Singapore Medical Council [2000] 2 SLR 274, CA (refd)
Tanjong Jaga Sdn Bhd v Minister of Labour and Manpower & Anor [1987] 1 MLJ 124, FC (refd)
Yong Nyuk Fang and Anor v Toh Boon Pin and Anor [2006] MLJU 336; [2006] 7 CLJ 296, HC (refd)

Legislation referred to

Criminal Procedure Code ss 152, 153, 154, 173(a),
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 r 3
Legal Profession Act 1976 ss 94(3), 94(3)(o), 103(1), 103B, 103D(1), 103D(2)
Medical Registration Regulations [SG] rr 27(2), 35(1)
National Land Code s 211, Form 14A
Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 reg 3(1)

Appeal from: Civil Appeal No B-02(W)-452–03 of 2015 (Court of Appeal, Putrajaya)

Sean Yeow (Hoi Jack S'ng with him) (Lee Hishamuddin Allen & Gledhill) for the appellant.
T Gunaseelan (Ramanathan Velu with him) (Rama Velu & Assoc) for the first respondent.

Ramly Ali FCJ (delivering judgment of the court):

[1] The appellant in the present appeal before us, the Bar Council, Malaysia, was the intervener in the proceedings in the courts below. The first respondent was an advocate and solicitor practising under the name and style of Messrs Rajehgopal Velu & Assoc. He was found guilty of misconduct unbefitting of an advocate and solicitor by the disciplinary board ('the DB') under s 94(3)(o) of the Legal Profession Act 1976 ('the LPA') and was suspended from practice as an advocate and solicitor for a period of 12 months. His appeal to the High Court was dismissed, but later was allowed by the Court of Appeal. Dissatisfied with the decision of the Court of Appeal, the appellant appealed to this court. Hence the present appeal before us. We heard and allowed the appeal on 29 June 2016 but with a reduced period of suspension of six months with effect

from 21 days from the date of the order with no order as to costs. We shall now give our reasons for the decision.

FACTUAL BACKGROUND

[2] On 21 July 2013, the second respondent, one Ganashalingam a/l Rajah wrote a letter of complaint against the conduct of the first respondent, to the DB ('the complaint').

[3] The complaint was about the first respondent who had attested two signatures in a property transfer form ('Form 14A'). The signatures were purportedly those of the late Mdm Maheswari a/p Veerappoo (the mother of the second respondent), and one Mdm Ponnamah a/p Chinniah, as the vendors. The late Mdm Maheswari had already passed away at the time the first respondent attested the alleged execution of the said Form 14A, while Mdm Ponnamah claimed that she did not at any time sign the said Form 14A. The complainant, in his letter, claimed that there was a 'penipuan' committed by the first respondent, as a result the complainant had lost the property to one Soo Chee Ming, who was the purchaser as stated in the said Form 14A.

[4] An investigating tribunal ('IT') was appointed on 23 June 2005 to investigate into the matter. The IT had on 29 June 2005, written a letter to the first respondent seeking his written explanation. In his letter of explanation dated 6 July 2015 to the IT, the first respondent stated, among others:

(a) he admitted attesting the Form 14A without the presence of Mdm Maheswari and Mdm Ponnamah;

(b) he did so in trust and reliance on his freelance staff, Rengasamy @ Balasundram a/l Veerappan, whom he had known and trusted for the past ten years;

(c) he was informed by the said Renggasamy @ Balasundram a/l Veerappan that both Mdm Maheswari and Mdm Ponnamah were his relatives/aunts and that they were of old age and were constrained in their physical movement and requested the first respondent to attest their signatures as vendors of the property;

(d) he assumed that the purchaser's solicitor, Abigail Lee Mei Sing of Messrs KL Lim & Lee, had conducted all the necessary inquiries and searches; and

(e) he admitted that he had acted negligently in the circumstances.

[5] The IT heard the complaint on 2 August 2005, 29 August 2005, 14 September 2005, 29 September 2005 and 17 October 2005, and after considering the first respondent's letter of explanation and giving him every

opportunity to cross-examine the witnesses of the complainant (and indeed his solicitor had cross-examined them), recommended that there should be a formal investigation by the disciplinary committee ('the DC') on the matter.

[6] On 20 March 2006, the DC was appointed and heard the complaint on 20 June 2006 and 28 June 2006. After hearing the parties the DC made, inter alia, the following findings:

> Apart from the fact that the respondent had attested the signatures of the transferors without seeing them, there is also the question of whether the respondent was involved in the fraud perpetrated on the owners of the property which resulted in the transfer of the property to the purchaser. On this issue, we find that there is insufficient evidence to prove that the respondent has intentionally participated in the fraud perpetrated on the owners of the property.
>
> Notwithstanding that there is insufficient evidence to show that the purchaser has intentionally participated in the fraud, the fact remains that the respondent has acted unprofessionally in attesting the signatures of the owners whom he did not witness actually signing the transfer.

[7] The DC accordingly found the first respondent guilty of conduct unbefitting of an advocate and solicitor under s 94(3)(o) of the LPA and recommended that he be suspended from practice as an advocate and solicitor for a period of six months.

[8] The DB heard the matter on 20 June 2006 and 28 June 2006 in the presence of the complainant and his counsel as well as the first respondent and his counsel pursuant to s 103D(2) of the LPA. The DB having agreed with the DC that the first respondent was guilty under s 94(3)(o) of the LPA, imposed a greater punishment and suspended the first respondent from practice as an advocate and solicitor of the High Court of Malaya for a period of 12 months. The suspension was to take effect 21 days from the date of the order (16 May 2014).

AT THE HIGH COURT

[9] Dissatisfied with the DB's decision, the first respondent appealed to the High Court. At the High Court, the first respondent raised the following issues:

(a) that there was no specific charge framed and preferred against the first respondent in the proceedings (first issue);

(b) that Ms Abigail MS Lee from Messrs KL Lim & Lee was not called to testify and thus giving the first respondent no opportunity to cross-examine this witness and this was a procedural failure as well as

breach of natural justice and the court should invoke adverse inference against the complainant (second issue); and

(c) that the National Land Code allows attestation to be made based on trust and, in this case, the first respondent trusted Balasundram who brought him the documents (third issue).

[10] On the first issue the learned trial judge found that it was not fatal and it did not hamper the defence of the first respondent as he was very much aware of the complaint against him; and the complaint itself was a sufficient notice on the matter facing him.

[11] On the second issue, the trial judge found that it was of no consequence to the complaint faced by the first respondent. The trial judge was of the view that whether Ms Abigail testified or not it did not take away the fact that the first respondent did not deny that he had attested the signatures of the vendors in their absence; and the non-denial of the first respondent amounted to an admission to the complaint against him in respect of which he was given full liberty to explain, and therefore there was no breach of natural justice.

[12] On the third issue, the trial judge, applying the provisions of s 211 of the National Land Code and the decision in *Albert Chew v Hong Leong Finance Bhd* [2001] 4 MLJ 497; [2001] 4 CLJ 419, held that it was a mandatory requirement for the person authorised to attest a signature to ensure that the instrument in question was signed by the real person before him.

[13] On this issue, the trial judge said: 'I could locate no provision in the National Land Code as contended by the plaintiff (first respondent) which allows attestation based on trust and in the absence of the person executing the document'.

[14] In the upshot, the trial judge dismissed the first respondent's appeal.

AT THE COURT OF APPEAL

[15] The first respondent then appealed to the Court of Appeal against the decision of the High Court. At the Court of Appeal, the first respondent raised two main grounds, namely:

(a) that there was no charge framed against the first respondent before the DC; and

(b) in enhancing the punishment to a suspension of 12 months, from the six months as recommended by the DC, the DB did not give any reasons.

[16] The Court of Appeal allowed the first respondent's appeal on 4 August 2015 and held that a charge must be precisely formulated and framed to include specific accusation against the first respondent who had the right to know and must have notice of the very nature of the allegations against him at the first opportunity.

[17] The Court of Appeal also held that the DC had acted outside the scope of powers granted to it, which was to inquire into the complaint of fraud, when it held that the first respondent had acted unprofessionally and was guilty of misconduct under s 94(3)(o) of the LPA in attesting the signatures in question which was not the subject matter of the complaint. The Court of Appeal was 'constrained to hold that the DC's decision is null and void for illegality' and therefore the decision of the DB (including the imposition of the suspension order of 12 months on the first respondent) was also null and void.

BEFORE THIS COURT

[18] Dissatisfied with the decision of the Court of Appeal, the intervener appealed to this court. At the hearing of the appeal before us parties raised three issues, namely:

(a) whether the DB and the DC are required to frame a formal charge as against an advocate and solicitor in disciplinary proceedings ('the first issue');

(b) whether the findings or decisions of the DC and the DB in the disciplinary proceedings against the first respondent fall within the terms or scope of the complaint ('the second issue'); and

(c) whether the DB has the power to enhance the punishment recommended by the DC on the first respondent without giving any reasons ('the third issue').

[19] It is not in dispute that a letter of complaint dated 21 July 2003 was sent by the complainant, the second respondent in this appeal, alleging misconduct committed by the first respondent as an advocate and solicitor in attesting the signatures of the alleged vendors one Mdm Maheswari and Mdm Ponnamah in the related Form 14A without seeing them sign in his presence.

[20] To better understand the true meaning of the complaint in detail, it is important to reproduce the full content of the letter in its original text in Bahasa Malaysia:

Ganashalingam A/L Rajah

No 16, Jalan Dato' Yusof Shahabudin 4,

Taman Sentosa,

41200 Klang,
Selangor Darul Ehsan
Tel: 012-2176860
21/7/03

Lembaga Tatatertib Peguam-Peguam
9th Floor, Wisma Maran
28, Medan Pasar,
50050 Kuala Lumpur

Tuan,

Per: Aduan Tentang Salahlaku Peguam
Nama: V. Rajehgopal
Tempat Beramal: Rajehgopal Velu & Partners, No. 41, Mezzanine Floor, Wisma Valiappa, Jalan Dato' Hamzah, Klang, Selangor (Tel: 03-33723804)
Penipuan Penyaksian Tandatangan di atas Borang 14A
Pindahmilik Hartanah di bawah hakmilik GM 434, Lot
No. 343, Mukim Batang Berjuntai, Negeri Selangor Darul Ehsan
Pemilik-Pemilik asal: Ponnamah a/p Chinniah
Maheswary a/p Veerappoo

Saya merujuk kepada perkara di atas. Saya mewakili ibu saya, Maheswari a/p Veerappoo yang telah meninggal dunia pada 10 September 94.

Dukacita saya maklumkan kepada pihak tuan bahawa peguam yang tersebut di atas telah melakukan satu penipuan dalam menyaksikan tandatangan ibu saya (Maheswari a/p Veerappoo) dan Ponnamah a/p Chinniah bagi pindahmilik ke atas hartanah tersebut di atas.

Dalam borang tersebut, dinyatakan bahawa tarikh beliau menyaksikan Ponnamah A/P Chinniah dan ibu saya menandatangani borang pindahmilik tersebut adalah pada 4 March 02. Sedangkan pada masa itu, ibu saya telah meninggal dunia. Beliau meninggal dunia pada 10 April 94.

Manakala Ponnamah a/p Chinniah tersebut pada bila-bila masa tidak pernah menandatangnai borang pindahmilik tersebut. Oleh itu, tandatangan beliau dan ibu saya tersebut telah dipalsukan. Memandangkan ibu saya telah meninggal dunia pada 10 April 94 dan Ponnamah a/p Chinniah tidak pernah menandatangani borang pindahmilik terebut, maka peguam V. Rajehgopal tersebut telah melakukan satu penipuan bahawa beliau telah menyaksikan Ponnamah a/p Chinniah dan si mati menandatangani borang pindahmilik tersebut.

Akibat daripada pemalsuan tersebut, hakmilik hartanah tersebut telah dipindahkan kepada seorang bernama Soo Chee Ming. Berikutan perkara ini juga, Ponnamah a/p Chinniah tersebut telah membuat laporan polis.

Bersama-sama ini saya lampirkan dokumen-dokumen yang berikut untuk rujukan tuan:-

(a) Sesalinan Borang Pindahmilik yang telah didaftarkan pada 31 May 02.

(b) Sesalinan Surat Mati Maheswari a/p Veerappoo.

(c) Sesalinan hakmilik hartanah tersebut yang telah ditukar namanya kpeada Soo Chee Ming.

(d) Sesalinan laporan Polis oleh Ponnamah a/p Chinniah bertarikh 23 June 03.

(e) Sesalinan surat kepada Pentadbir Tanah Daerah Kuala Selangor bertaikh 24 June 2003.

(f) Sesalinan Surat Akuan saya bertarikh 30 October 2003.

(g) Sesalinan Kad Pengenalan saya.

Oleh kerana salahlaku oleh peguam tersebut adalah satu kesalahan yang serius saya berharap pihak tuan dapat menyiasat perkara ini dan mengambil tindakan yang sewajarnya terhadap peguam tersebut. Terima kasih.

[21] In essence, in the said letter of complaint, the second respondent made the following assertions:

(a) that Mdm Maheswari and Mdm Poonamah were the registered owners of a piece of landed property;

(b) that on or about 4 March 2002, the property was transferred to one Soo Chee Ming using a Form 14A purportedly signed by the said Mdm Maheswari and Mdm Ponnamah;

(c) that the signatures of Mdm Maheswari and Mdm Ponnamah were allegedly attested by the first respondent, as an advocate and solicitor;

(d) that Mdm Maheswari died on 10 April 1994;

(e) that Mdm Ponnamah did not at any time sign the said Form 14A; and

(f) that by reason of the above the first respondent had committed a 'penipuan' in saying that the signatures of Mdm Maheswari and Mdm Ponnamah were attested before or in front of him.

First issue: No charge framed

[22] On the first issue, that no specific charge was framed and preferred against the first respondent in the disciplinary proceedings, the learned High Court judge held that it was not fatal in the present case and it did not hamper the defence of the first respondent as he was very much aware of the complaint against him. To the learned judge, the complaint itself was a sufficient notice to the first respondent on the matter facing him.

[23] The Court of Appeal disagreed with the High Court on this issue. The Court of Appeal expressed the view that:

> the disciplinary proceedings initiated against an advocate and solicitor are serious and carry penal consequences such as a fine, suspension or being struck off the Roll of Advocates and Solicitors. Accordingly, we agree with the view in *Abdullah bin Borhan v Ketua Polis Melaka & Anor* [2008] 8 MLJ 161 that the charge in question must be precisely formulated to include the specific accusation against the appellant who has the right to know and must have notice of the very nature ofthe charge at the first opportunity. This will enable the appellant to be forewarned with clarity and certainty the essential elements or ingredients against him in order to ensure that he can be forearmed in his defence for the purpose of directing all the evidence exclusively to the specific charge (see also the Privy Council's opinion in *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 (PC)). The view is that in a disciplinary process, the respondent is only required to respond to the charge and nothing else was approved in *Lim Teng Ee Joyce v Singapore Medical Council* [2005] SGHC 129.

[24] Learned counsel for the appellant submitted before us that there was no requirement under the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('the 1994 Rules') requiring charges to be framed against an advocate and solicitor in disciplinary proceedings; thus an omission to frame a formal charge against the first respondent in the present case would not amount to a breach of the LPA as there cannot a breach where no such requirement exists. The appellant contended that what was essential was that the first respondent is supplied with sufficient material particulars to enable him to meet the allegations made against him in the complaint. The appellant cited two authorities to support this point, namely: *Aziana bt Uda Bahari v Gan Kong You* [2009] 3 MLJ 495; [2009] 8 CLJ 438 (HC) and *Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor* [2012] 2 MLJ 8; [2011] 3 CLJ 213 (HC).

[25] Learned counsel for the first respondent, on the other hand, submitted that s 103B of the LPA provides that an inquiry must be carried out into a written complaint and its findings shall be made expeditiously. It was further submitted 'that merely because the word 'inquiry' is used in the Legal Profession Act 1976, it does not follow that no charge needs to be framed for the solicitor to answer'.

[26] Learned counsel further submitted that the requirement for a charge to be framed was so obvious that Parliament in its wisdom did not think it necessary to say so in express terms. It was also submitted that a solicitor is entitled to know not just the facts he would have to meet but also the appropriate 'head' of grave impropriety or misconduct as highlighted in s 94(3) of the LPA that he had to face in any disciplinary proceedings against him.

[27] It was further submitted by learned counsel that the importance of a charge, in a case of an advocate and solicitor facing disciplinary proceedings under the LPA must be appreciated in the context of the LPA, and the courts in Malaysia and Singapore have emphasised the need and importance of framing a charge in the proceedings. To support his proposition, learned counsel relied on the following authorities, namely *Yong Nyuk Fang and Anor v Toh Boon Pin and Anor* [2006] MLJU 336; [2006] 7 CLJ 296; *Lim Teng Ee Joyce v Singapore Medical Council* [2005] 3 SLR 709; [2005] SGHC 129; *Tan Tiang Hin Jerry v Singapore Medical Council* [2000] 2 SLR 274; *Abdullah bin Borhan v Ketua Polis Melaka & Anor* [2008] 8 MLJ 161; [2008] 9 CLJ 605; *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 308 and *Saufee A Rahman v Che Yusof Che Ngah & Ors* [2014] 7 CLJ 691.

[28] Learned counsel also submitted that even though the LPA did not have an express provision for a charge to be framed, common law will come into the picture and supply the deficiency so as not to allow a person be punished without being heard. The case of *Cooper v The Board of Works for the Wandsworth District* (1863) 143 ER 414; (1861-73) All ER Rep 1554 was cited in support of the proposition.

[29] We agree with learned counsel for the appellant that there is no provision in the LPA or the 1994 Rules requiring a charge to be specifically framed or preferred against an advocate and solicitor in disciplinary proceedings.

[30] We also agree that in disciplinary proceedings under the LPA, the advocate and solicitor concerned must be given an opportunity of being heard. This is a basic rule of natural justice which must be observed. The advocate and solicitor concerned shall not be punished without being heard. On this point, the Privy Council in *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 had aptly remarked (which we agree):

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.

[31] At the outset, it must be stressed that disciplinary proceedings against a solicitor under the LPA are not proceedings in a criminal court of law. The proceedings although quasi-judicial in nature need not emulate the strict adversarial procedure practised in a criminal court (see *Jerald Allen Gomez v Shencourt Sdn Bhd (Majlis Peguam, intervenor)* [2006] 2 MLJ 343). On this point we agree with Abdull Hamid Embong J (as he then was), in *Jerald Allen*

Gormez when His Lordship commented: 'To say that, in the absence of such procedures, the disciplinary committee should adhere strictly to the procedures in the proceedings of a criminal court, would be implying some requirements not intended by statute'.

[32] The rules of natural justice in disciplinary proceedings should not be governed by the adversarial system of justice of criminal courts but should be inquisitorial or investigatory in nature. Inquisitorial or investigative proceedings are not inconsistent with the rules of natural justice (see Federal Court's decision in *Lembaga Jurutera Malaysia v Leong Pui Kun* [2009] 2 MLJ 36).

[33] It is a trite principle that a disciplinary committee of a professional body is entitled to conduct its disciplinary hearing in respect of a member of the body in whatever way it deems appropriate provided that the method or manner it adopts is not in breach of any specific provisions of the relevant statutes or regulations and does not result in a denial of natural justice to the member concerned.

[34] In *Lim Ko & Anor v Board of Architects* [1966] 2 MLJ 80, the Federal Court held, inter alia, that the proceedings of disciplinary tribunals or committees conducting an inquiry are by no means bound by the strict rules which apply to criminal trials. A legalistic approach is not appropriate in those proceedings. The same principle was adopted by the Federal Court in *Tan Hee Lock v Commissioner for Federal Capital & Ors* [1973] 1 MLJ 238; *Tanjong Jaga Sdn Bhd v Minister of Labour and Manpower & Anor* [1987] 1 MLJ 124; and by the Court of Appeal in *Haji Ali bin Haji Othman v Telekom Malaysia Bhd* [2003] 3 MLJ 29.

[35] In the present case, we agree that the first respondent was entitled to know the details of the allegations made against him in the letter of complaint at the very earliest stage, ie before the investigative tribunal started its investigation or inquiry. This would enable the first respondent to prepare his explanation and later to be heard at all stages of the proceedings thereafter. The statements in the letter of complaint must convey with sufficient clarity and certainty on the nature of all the allegations made against him. The first respondent must be able to meet every relevant ingredient of the complaint and must be given opportunity to contradict them.

[36] In *Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor* [2012] 2 MLJ 8; [2011] 3 CLJ 213, the High Court held:

(1) The LPA does not provide specifically that the DC is required to frame a charge. Thus an omission to frame a formal charge would not amount to a breach of the LPA. There was no requirement that it ought to be framed

> in any particular form or that it ought to take the form of a charge framed in a criminal proceeding. What was essential was that the person against whom the misconduct was alleged was supplied with sufficient material particulars to enable him to meet the allegation. Herein, all the requirements of a charge were found in the letter of complaint that the DB had forwarded to the appellant. The appellant had sufficient notice of the complaint against him. Despite the absence of a formal charge the appellant was able to meet the complaint lodged against him. The absence of a charge did not occasion any procedural unfairness or a breach of the rules of natural justice as the appellant had not been deprived of the opportunity to contradict the complaint.

We agree with the above.

[37] In considering whether there was any prejudice or denial of natural justice to the first respondent, the court is to look at the substance, rather than the form, to determine whether the first respondent had been informed of all the material ingredients and facts relating to the complaint lodged against him. It does not necessarily mean that it must only be by way of a formal charge framed against him. The first respondent needed to be informed sufficiently of the facts and particulars of the misconduct complained of to enable him to explain and exculpate himself. That is his right and it forms an integral part of the rules of natural justice.

[38] The relevant facts and material particulars that need to be informed to the first respondent are particulars which, if established, are capable of showing the elements of misconduct mentioned in the complaint. In this respect, we agree with Bowen LJ in *Leeson v General Council of Medical Education and Registration* [1889] 43 Ch D 366 where he said:

> With respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous. That is all.

[39] Our view is that, any complaint against an advocate and solicitor must comply with the requirements under r 3 of the 1994 Rules which provides:

> 3 Contents of Complaints
>
> (1) A complaint shall be made in writing by the complainant or his solicitor.
>
> (2) A complaint shall contain the following:
>
> (a) the full name, identity card or passport number and address of the complainant;
>
> (b) the facts of the complaint;

(c) copies of any documents that the complainant proposes to rely on in support of his complaint;

(d) the signature of the complainant;

(e) the name and address of the complainant's solicitor, if any.

[40] The complaint against the first respondent in this case fulfilled all the above requirements under r 3 of the 1994 Rules. It was sufficient to give opportunity to the first respondent to exercise his right to be heard and to explain and exculpate himself, even though it was not presented in the form of a formal charge. Even if a formal charge is drawn up, such charge would inevitably be a regurgitation of the facts and particulars contained in the letter of complaint.

[41] The first respondent in the present case knew fully well the details of the allegation made against him as stated in the letter of complaint. From the records of proceedings made available to us, we find that the first respondent was represented by his counsel at all levels of the proceedings. He took part in the proceedings. Based on the details of his participation in the proceedings and his letter of explanation dated 6 July 2005, it is clear that he had sufficient notice of all the material facts of the complaint made against him. The conduct of the first respondent's right from the beginning, was inconsistent with a person who did not have sufficient knowledge of the complaint against him. The absence of a charge specifically framed against him did not occasion any procedural unfairness or breach of the rules of natural justice. He was not prejudiced in any manner. He was not deprived of the opportunity to contradict the complaint against him.

[42] As stated earlier, there is no requirement either under the LPA or under the 1994 Rules requiring a charge to be framed against the first respondent. The DB and DC was at liberty to proceed with the disciplinary proceedings against the first respondent without having to specifically frame a formal charge against him provided, to borrow the words of Nik Hashim FCJ, in *Lembaga Jurutera Malaysia v Leong Pui Kun* [2009] 2 MLJ 36, 'the procedure adopted was not in breach of any specific provision of the Act and did not result in a denial of natural justice' to the first respondent.

[43] Apparently, the Court of Appeal in finding that a formal charge needed to be specifically framed against the first respondent was relying on the authority of *Abdullah bin Borhan v Ketua Polis Melaka & Anor* [2008] 8 MLJ 161; [2008] 9 CLJ 605 where the High Court in Melaka in dealing with disciplinary proceedings against a police officer ruled that 'the procedural requirements in drafting a charge meant for a criminal trial would apply with equal force to a disciplinary charge such as in the instant case because both of

them share the common denominator ie penal consequences'; and 'It is trite law that the charge in question must be precisely formulated to include the specific accusation against the plaintiff who has the right to know and must have notice of the very nature of the charge at the first opportunity'. The same authority were also relied upon by the first respondent's counsel in his submissions before us in the appeal.

[44] With respect, the Court of Appeal had failed to notice that the disciplinary proceedings in that case were against a police officer based on the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, where reg 3(1) of the said Regulations sets out expressly a mandatory requirement that 'A charge shall be framed in accordance with the offence as prescribed in the Schedule. The charge shall describe the offence briefly and identify the officer with the unlawful act or omission charged'. In the present case, we are dealing with disciplinary proceedings against an advocate and solicitor under the LPA. As stated earlier, there is no express provision either in the LPA or the 1994 Rules mandating such requirement. Therefore the issue of framing a charge such as is required under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulation 1970 does not arise in the case before us and failure to draft such a charge against the first respondent does not amount to a breach of the law or relevant regulations.

[45] The Court of Appeal also relied on the decision of the Privy Council in *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169 (PC) to support its finding on the requirement of having specific charge framed against the first respondent.

[46] Our observation is that the Privy Council in that case did not deal with the issue of a charge to be framed against the police officer in the disciplinary proceedings. It is more of a case of a complaint by the police officer that he was not given a reasonable opportunity of being heard in the disciplinary proceedings against him. On that issue the Privy Council ruled:

> Applying these principles Their Lordships are of opinion that Inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words: 'In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal.

[47] The issue in that case was that a copy of the findings of the Board of Inquiry which contained statements of the witnesses, was only given to the adjudicating officer but not to the officer charged. Similar complaint does not arise in the present case before us. In short, that case did not support the Court of Appeal's finding pertaining to the requirement to frame a formal charge against the first respondent in the present case.

[48] The Court of Appeal also relied on the case of *Lim Teng Ee Joyce v Singapore Medical Council*, to support its finding on the same issue relating to the framing of a specific charge against the first respondent and that in a disciplinary process, the first respondent is only required to respond to the charge and nothing else. In that case the court in Singapore was dealing with disciplinary proceedings involving a medical practitioner in Singapore.

[49] It must be noted that it was a mandatory requirement in a disciplinary proceedings involving medical practitioners in Singapore that a charge be framed against the practitioner as required under reg 27(2) of the Medical Registration Regulations in Singapore, and the charge shall first be read out to the practitioner; and that reg 35(1) of the Regulations empowers a disciplinary tribunal to alter a charge or frame a new charge whether in substitution for or in addition to an existing charge at any time before it makes a finding. Clearly, there were statutory provisions mandating such requirement. Again, we find that this authority did not support the Court of Appeal's finding on the issue.

[50] As stated earlier, disciplinary proceeding involving an advocate and solicitor under the LPA or the 1994 Rules cannot be equated to criminal proceedings in a criminal court of law, especially relating to the framing of a formal charge against the accused person. Section 173(a) of the Criminal Procedure Code ('the CPC') provides that 'when the accused appears or is brought before the court a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried'.

The form of a charge, particulars as to time, place and person contained in a charge, and the manner of committing an offence to be stated in a charge are statutorily provided under ss 152, 153 and 154 of the CPC. These are mandatory statutory requirements provided for by law which must be complied with in criminal proceedings in a criminal court of law. However, there is no such requirement under the LPA or the 1994 Rules relating to disciplinary proceedings involving an advocate and solicitor.

Second issue: Whether findings of the DC and DB fall within the scope of the complaint

[51] This issue was touched upon by the Court of Appeal in its judgment. In

para 17 of its judgment, the Court of Appeal ruled as follows:

> In this instance, the DC was appointed to conduct an inquiry into the complaint pursuant to s 103B of the LPA 1976. The appellant was exonerated of the complaint of fraud against him. The finding that the appellant had acted unprofessionally in attesting the signatures in question was not the subject matter of the complaint. In our view, the DC had acted outside the terms of power granted to it, which is to inquire into the complaint of fraud. The DC's finding that the appellant is guilty of misconduct was made for an extraneous purpose (*R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; *Ranjit Kaur a/p S Gopal Singh v Hotel Excelsior (M) Sdn Bhd* [2010] 6 MLJ 1; [2010] 8 CLJ 629). Accordingly, we are constrained to hold that the DC's decision is null and void for illegality.

[52] Learned counsel for the appellant in his written submissions before us submitted as follow:

> The findings and recommendation made by the DC and the making of the DB Order were within the scope of the complaint as they arose from facts based on the complaint, which were put to and admitted by R1.
>
> The Court of Appeal erred in finding that the unprofessional manner in which R1 attested the signatures on the Form 14A was not the subject matter of the complaint.
>
> Similarly, although the DC found that there was insufficient evidence to prove that R1 had intentionally participated in the fraud, the undeniable fact remains that R1 had attested the Form 14A without the presence of R2's late mother and Ponnamah.

[53] In order to appreciate and decide on this issue, it is necessary to refer to and read the full contents of the letter of complaint in question.

[54] The letter of complaint in itself, does not contain the word 'fraud' although the word was used throughout the proceedings right from the beginning by counsel as well the courts below. The gist of the complaint as can be gathered and understood from the full text of the letter is that the first respondent as an advocate and solicitor (in its original text) 'telah melakukan satu penipuan dalam menyaksikan tandatangan ibu saya (Maheswari a/p Veerapoo) dan Ponnamah a/p Chinniah bagi pindah milik ke atas hartanah tersebut di atas ... Dalam borang tersebut, dinyatakan bahawa tarikh beliau menyaksikan Ponnamah a/p Chinniah dan ibu saya menandatangani borang pindah milik tersebut adalah pada 4 Mac 2002. Sedangkan pada masa itu, ibu saya telah meninggal dunia. Beliau meninggal dunia pada 10 April 1999, manakala Ponnamah a/p Chinniah tersebut pada bila-bila masa tidak pernah menandatangani borang pindah milik tersebut ... *maka peguam V Rajegopal tersebut telah melakukan satu penipuan bahawa beliau telah menyaksikan Ponnamah a/p Chinniah dan si mati menandatangani borang pindah milik tersebut*'. In short, the complaint was that the first respondent as an advocate

and solicitor had attested the relevant Form 14A for the transfer of the land in question without the presence of the late Mdm Maheswari a/p Veerapoo and Mdm Ponnamah a/p Chinniah. The 'penipuan' mentioned in that letter clearly refers to that conduct of the first respondent.

[55] The above complaint or allegation was not disputed by the first respondent. He admitted attesting the relevant Form 14A without the presence of the two vendors and also admitted that he had acted negligently in the circumstances. His only excuse was that he did so in trust and reliance of his freelance staff, one Rengasamy @ Balasundram a/l Veerapan, whom he had known and trusted for the past ten years.

[56] We therefore agree with learned counsel for the appellant that the findings and recommendations made by the DC and the making of the DB order that the first respondent was guilty of conduct which is unbefitting of an advocate and solicitor under s 94(3)(o) of the LPA in attesting the said Form 14A without the presence of the vendors were within the scope of the complaint. The Court of Appeal erred in finding that the first respondent's conduct which the DC found to fall under s 94(3)(o) of the LPA was not the subject matter of the compliant and that the DC had acted outside the terms of power granted to it, which was to inquire into the complaint of fraud. Therefore that finding cannot stand.

Third issue: enhancement of punishment by the DB without giving reasons

[57] This issue was raised in the first respondent's submissions before us. Counsel for the first respondent submitted that the DB erred in enhancing the punishment against the first respondent of suspension from practice as an advocate and solicitor of the High Court of Malaya from a period of six months as recommended by the DC to a period of 12 months with effect from 21 days from the date of the order (16 May 2014), without giving any reasons. This, according to learned counsel, was in breach of s 103D(1) of the LPA.

[58] The facts relating to this issue from the records of the proceedings are not in dispute, ie the DB has not given any reasons for rejecting the DC's recommendation and enhancing the suspension period from six months as recommended by the DC to 12 months. Learned counsel for the first respondent contended that the DB had exceeded its power for failing to give reasons and therefore the order as to the suspension period must fall. Learned counsel relied on the current provisions of s 103(1) of the LPA which in effect provides that 'After consideration of the report of the Disciplinary Committee, the Disciplinary Board may make an order affirming or rejecting the finding or recommendation of the Disciplinary Committee and if the Disciplinary Board rejects the finding or recommendation of the Disciplinary Committee, the

Disciplinary Board shall record the reason for the rejection'.

[59] We agree that under the current provisions of s 103D(1) of the LPA, the DB shall record the reasons if it rejects the recommendation made by the DC. It is a mandatory requirement. However, it must be noted that the said requirement was only inserted into the section by an amendment to the LPA vide the Legal Profession (Amendment) Act 2012 ('Act A1444') which came into effect on 3 June 2014 vide PU (B) 262/2014. There was no indication that the amendment was to take effect retrospectively.

[60] The disciplinary proceedings on the matter before the DB was conducted on 16 May 2014 (prior to the effective date of the amendment to s 103D(1) of the LPA). The suspension order was also made on 16 May 2014. At that time, there was no statutory requirement in s 103D(1) or other provisions of the LPA which required the DB to give and to record its reason if it chooses to reject the recommendation made by the DC. There was no statutory duty or obligation to do so. Therefore the DB cannot be said to have exceeded its power for failing to give reasons for its rejection of the DC's recommendation.

[61] However, in the present appeal, based on the facts and circumstances of the case, we are of the view that the period of suspension of six months imposed on the first respondent as recommended by the DC, is more reasonable and appropriate. The fact that the first respondent had admitted to his negligent conduct in the matter question and that there was no finding of fraud on his part, coupled with the fact that he was relying on his freelance staff one Rengasamy @ Balasundram whom he had known and trusted for the past ten years should be considered as good mitigating factors for him.

CONCLUSION

[62] In the upshot, we would answer the issues before us as follows:

(a) the DB and the DC are not required to frame a specific formal charge as against an advocate and solicitor in disciplinary proceedings under the LPA. There is no such requirement under the LPA as well as the 1994 Regulations;

(b) the findings of the DC and the DB in the disciplinary proceedings that the first respondent was guilty of conduct which is unbefitting of an advocate and solicitor under s 94(3)(o) of the LPA fall within scope of the complaint lodged against him; and

(c) at the material date (16 May 2014) the DB had the power to enhance the punishment recommended by the DC on the first respondent without giving any reasons, as the statutory requirement to give reasons was only

A brought into effect on 3 June 2014 vide the Legal Profession (Amendment) Act 2012 (Act A1444).

[63] We therefore allow the appeal and set aside the order of the Court of Appeal. We hold that the first respondent was in breach of s 94(3)(o) of the B LPA. We make an order that the first respondent be suspended from practice as an advocate and solicitor in the High Court of Malaya for a period of six month to take effect from 21 days from the date of this order. We make no order as to costs (as agreed by the parties).

C *Appeal allowed with no order as to costs.*

Reported by Kohila Nesan

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